IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4357 OF 2000

Smt. Jaswant Kaur,
residing at B-101, Shailesh
Co-op. Housing Society Ltd.,
Sector 19A, Nerul,
Navi Mumbai. .... Petitioner

- Versus -

1. Rayat Shikshan Sanstha,
   a Trust and Society registered
   under the Bombay Public Trusts
   Act and the Societies
   Registration Act, having its
   Head Office at Satara.
2. Modern School,
   Vashi, Navi Mumbai-400 703
   (through A.K. Kachare,
   Headmaster).
3. Keshawrao Pawar English Medium
   Primary School, Karad,
   District: Satara. .... Respondents

Ms Betty D'Souza i/b Shri M.P. Vashi for
the Petitioner.
None for the Respondents, though served.

CORAM: R.M.S. KHANDEPARKAR &
NARESH H. PATIL, JJ.
DATED: SEPTEMBER 01, 2006

ORAL JUDGMENT (Per Naresh H. Patil, J.):

1. The petitioner was appointed as an assistant teacher in the year 1983 in the school, namely, Dronagiri High School (English Medium) at Karanja-Uran, by appointment order dated 27-8-1983 by respondent No.1. She joined the school on 13-6-1983 and till 26-12-1996 the petitioner worked in the said primary school. From 27-12-1996 the petitioner was transferred to Modern School, Vashi (Primary English Medium). It is the contention of the petitioner that somewhere in the year 1998 the Fifth Pay Commission report was published by the Government and was made applicable to the members of the teaching and non-teaching staff of the schools. Consequently, the petitioner was to be benefited by the said Commission's report. It is the contention of the petitioner that due to application of the Fifth Pay Commission report, the salary of the petitioner was to be enhanced with effect from 1-1-1996. The petitioner and some of the staff members represented to the Management for getting increase in the salary in accordance with the Fifth Pay Commission report but the

same was not considered by the Management. As the petitioner and some other members pressed their demand for payment of salary in accordance with the Fifth Pay Commission report, the Management with mala fide intention resorted to the order of transfer passed against the petitioner. The petitioner further contends that because of the vindictive attitude of the Management, she was ultimately transferred from Vashi to a school run by the respondent No.1 at Karad, District Satara by an order dated 19-6-2000. The petitioner received the said order of transfer on 26-6-2000. As the petitioner was not well, she went on leave with effect from 27-6-2000. The transfer order dated 19-6-2000 is annexed to the petition by the petitioner.

2. The petitioner contends that being a primary teacher, she was denied the service benefits, as admissible to her. The Management of the school, according to the petitioner, had no right and justification to transfer her from one school to another, much less in the absence of an appropriate decision taken by the competent forum of the Management. It is the petitioner’s allegation that some of the staff members are favoured and the petitioner is punished without any reason or justification.

3. The respondent No.1 has filed an affidavit in reply

through a duly authorised officer from their legal department. The respondent No.1 denied the allegations made by the petitioner. It was specifically contended in the reply that the petitioner was clearly given to understand that the job was transferable. Reliance was placed on a clause mentioned in the letter of acceptance signed by the petitioner to the effect "I will serve in any of the Institution of the Rayat Shikshan Sanstha, if transferred.". The respondent No.1 further contended that the petitioner was transferred on administrative reasons which are disclosed in para 6 of the affidavit in reply, which is dated 25-9-2000. In the subsequent affidavit in reply filed by one B.B. Awad, Librarian of Modern School, Vashi, contention was raised by the respondent-Management to the effect that the petitioner was transferred under a decision taken by the Executive Committee of the Sanstha and consequently the order dated 19-6-2000 was passed transferring the petitioner with effect from 21-6-2000.

4. Learned counsel appearing for the petitioner submitted that the impugned order of transfer suffers from want of authority on the part of the Secretary and is backed by mala fides on the part of the Management. In the submissions of the learned counsel, there is no specific denial on the part of the Management that the Secretary of the Sanstha was authorised to transfer the

employees of the school and it was not necessary to place the issue of transfer before the co-ordination committee of the school.

5. We have considered the submissions advanced on behalf of the petitioner and also perused the record placed before this Court. The transfer order dated 19-6-2000, which is annexed to the petition, is signed by the Joint Secretary of respondent No.1. Perusal of the said order does not show that the same was placed before the competent committee like the co-ordination committee of the school and was approved by the committee and in consequence thereof the Joint Secretary had issued the transfer order under his signature. We do not find any specific averment in the affidavit in reply regarding the authority of the Joint Secretary to issue transfer orders except a contention sought to be raised in the affidavit in reply filed by the Librarian of respondent No.2 to the effect that the executive committee of the Sanstha had taken a decision to transfer the petitioner, but no such copy of the decision taken by the executive committee is placed on record of this Court. The authority of the Librarian to file the affidavit in reply, on behalf of respondent No.1, is also in question.

6. At the time of admission of this petition, this

Court had granted interim relief in terms of prayer clause (e) of the petition. Learned counsel for the petitioner states that in view of grant of the interim relief in favour of the petitioner, the petitioner is still working in respondent No.2-Modern School, Vashi. The petitioner had further raised the contention that the arrears of salary including the difference in salary and the other monetary service benefits due from 1-1-1996 as per the Fifth Pay Commission report are not paid to her.

7. The Management had raised contention in the affidavit in reply that earlier to the impugned transfer order, the petitioner was transferred, but the said order was not challenged by the petitioner. The ground that the petitioner did not challenge the first transfer order would not amount to refusal of her right to challenge the subsequent transfer which if the petitioner finds to be unjust and mala fide. We are, therefore, of the view that the impugned order of transfer passed by the respondent No.1 in case of the petitioner is required to be quashed and set aside for want of competency on the part of the Joint Secretary of respondent No.1. The letter of acceptance indicating the clause of transfer was relief upon by the Management. As we have mainly proceeded on the competency of the Joint Secretary to pass the impugned

order, the issue regarding the powers of the Management to transfer an employee from one school to another need not be gone into in this case.

8. The counsel for the petitioner stated that the petitioner would represent her case to respondent No.1 regarding payment of difference in salary and the other monetary service benefits. The petitioner is entitled to represent her case to respondent No.1 in this regard and in case such a representation is made to respondent No.1, we direct that respondent No.1 shall consider the same and decide the representation within a period of three months from the date of receipt of the same, in accordance with law.

9. For the reasons stated above, the petition stands allowed. The transfer order dated 19-6-2000, annexed as Exhibit-A to the petition, is quashed and set aside. The rule is made absolute in above terms with no order as to costs.

(Naresh H. Patil, J.) (R.M.S. Khandeparkar, J.)

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